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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,833	03/24/2001	Tuan-Hui Wu	UPA-01128	6404
33804	7590	06/15/2004	EXAMINER	
SUPREME PATENT SERVICES POST OFFICE BOX 2339 SARATOGA, CA 95070			MARTINEZ, DAVID E	
			ART UNIT	PAPER NUMBER
			2182	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,833

Applicant(s)

WU, TUAN-HUI

Examiner

David E Martinez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The use of numerous trademarks has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The specification is objected to because the material part of the Summary of the Invention appears to include essentially a verbatim repetition of the independent claim. There is no need to repeat that which can be found elsewhere in its entirety. The purpose of the brief summary of invention is to apprise the public, and more especially those interested in the particular art to which the invention relates, of the nature of the invention; see MPEP § 608.01(d).

The Abstract is also objected to under the same rationale as the specification for containing essentially a verbatim repetition of the independent claim.

Claim 5 is objected to because of the following informalities: there are typos on lines 6 and 7, the words "hertext" and "pache" should be fixed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 contains the trademarks/trade names "WINDOWS NT" and "LINUX". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe different types of operating systems and software applications, accordingly, the identification/description is indefinite.

Claims 2-11, 13 and 14, contain the trademarks/trade names "WINDOWS NT", "SAMBA" and "LINUX", thus rejected under the same rationale as claim 1 above.

With further regards to claim 2 contains "smb.conf" files in quotes (page 15, claim 2 line 9). Examiner doesn't comprehend if this is an example exemplary filename or if that's the particular file executed. Also, it is not understood if it refers to one file or a plurality of files.

Regarding claims 3, 7-11, 12 and 14, they contain typos of open-ended quotation marks that don't enclose whatever information is trying to be made either exemplary or particular to the corresponding claim.

With further regards to claim 3, step (a2) contains in quotes the "useradd" command (line 6), and also refers to the "second file server (line 8) without closing the quotation mark. As per the "useradd" command, It isn't clear if it's an exemplary command or if it's the particular command being executed. Step (a3) in claim 3 also contains the "/etc/group" file (line 11)" is it exemplary or the actual file operated on?

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With further regards to claim 4, it contains "useradd", "second file server, and "sendmail", thus rejected under the same rationale as claims 2 and 3 above.

With further regards to claim 5, it contains the trademarks/trade names "APACHE", thus rejected under the same rationale as claim 1 above.

Furthermore, the claim also contains the words in quotes "apache", "http.conf", "access.conf", thus rejected under the same rationale as claims 2 and 3 above.

With further regards to claim 6, it contains "wuftp", "/etc/ftpaccess", "/etc/ftphost", thus rejected under the same rationale as claims 2-3 above.

With further regards to claim 10, it contains the trademarks/trade names "IIS", thus rejected under the same rationale as claim 1 above.

Regarding claim 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Furthermore, claim 11 contains "wuftp", thus rejected under the same rationale as claims 2-3 above.

As per claims 12 and 15, they are dependent from claim 1 above thus rejected under the same rationale.

With further regards to claim 13, it contains the trademarks/trade names "POSTGRESQL" and "MYSQL", thus rejected under the same rationale as claim 1 above.

Regarding the above mentioned trademarks, Windows NT is always changing due to all the service packs provided by Microsoft Corp, and it is never constant. Furthermore, all different kinds of patches are released for it as well thus making it indefinite and not clear. Linux comes in a plurality of different versions wherein not only are the kernels different but also the applications that run over it, provided by many different vendors that make their corresponding distributions of Linux often geared to particular kinds of users, thus making it indefinite and not

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clear. Additionally, Linux is a variation of Unix thus making the claims even more indefinite. The same arguments hold true for the other trademarks claimed as well. Since there is a great deal of confusion and uncertainty as to the proper interpretation of the limitations of a claim, it would not be proper to reject such a claim on the basis of prior art. As stated in *In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962), a rejection under 35 U.S.C. 103 should not be based on considerable speculation about the meaning of terms employed in a claim or assumptions that must be made as to the scope of the claims (see MPEP 2173.06).

Due to the number of 35 USC § 112, second paragraph rejections, the examiner has provided a number of examples of the claim deficiencies in the above rejection(s), however, the list of rejections may not be all inclusive. Applicant should refer to these rejection(s) as examples of deficiencies and should make all the necessary corrections to eliminate the 35 USC § 112, second paragraph problems and place the claims in a proper format.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E Martinez whose telephone number is (703) 305-4890. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A Gaffin can be reached on (703) 308-3301. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DEM



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